

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3280 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HANS KAMAL ATAMPRAKASH GROVER AND ANOTHER.

Versus

STATE OF GUJARAT AND ANOTHER.

Appearance:

MR BA SURTI for Petitioners
MR PG DESAI, Ld. PP for Respondent No. 1
MR MA KHARADI for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 14/10/98

ORAL JUDGEMENT

Rule. Mr.P.G.Desai, learned Public Prosecutor, waives the service of Rule for and on behalf of respondent no.1-State of Gujarat, and Mr. M.A. Kharadi, waives service of Rule for and on behalf of respondent no.2. On being requested by the learned advocates of the parties, the application is taken up for hearing today

itself.

2. By this application, the petitioners pray the court to exercise the powers under section 482 of the Criminal Procedure Code, (hereinafter referred to as the Cr.p.c.), and quash the FIR lodged against them relating to the offences punishable under secs.447, 427 and 506 of the Indian Penal Code, with Umra Police Station.

3. The facts in brief may be stated. Within the Surat Municipal Corporation limits Village Piplod is situated, and within its local limits a land bearing Survey No.80 is situated. That land is divided into the plots. A plot No.9 thereof formerly belonged to Mehul Thakorebhai Vanmalibhai. He sold the same, executing the registered Sale Deed on 7th March, 1981, to Ranchhodbhai Ghelabhai Patel. Thakorebhai Vanmalibhai Patel later on purchased that plot No.9 from Ranchhodbhai Ghelabhai Patel and took the possession thereof. On 3rd May, 1983, Thakore Vanmalibhai Patel died. Ichchhiben the widow of Thakorebhai Vanmalibhai and Bhikhiben alias Urmilaben, deceased's daughter being the heirs and legal representatives became the owners and came into the possession of the plot No.9 in succession. In Town Planning Record, their names have been mutated, and also in the records of Surat Municipal Corporation. The petitioners are having no right, title and interest in the said plot No.9. However, they try to usurp that plot from Ichchhiben and Bhikiben. They are threatening and trying to cause damage to their plot. Though their watchman was present at the plot, the petitioner No.1 called the gangsters and head strong persons who, using the force and terrifying with the weapons they were having, trespassed into the plot No.9. The petitioner no.1 and the members of his gang cut off about 100 Babul Trees and caused damage. The petitioner No.2 is the mother of petitioner no.1. She claiming the ownership over the plot no.9 intends to grab the said plot, and therefore, a complaint was filed. In the year 1992, an attempt to usurp the plot was made, and therefore, Regular Civil Suit No.246/1992 is filed against the petitioners on 21.2.1992 in the court of the Civil Judge (S.D.) at Surat. In that suit, an application for interim relief was filed. Initially the court ordered to maintain status-quo upto 3rd February, 1998. On the day when the application for interim injunction was to be heard the advocate representing Ichchhiben and Bhikiben could not appear. The application for interim injunction therefore came to be dismissed. Against that order, an application Ex.100 was also filed for review of the order. Simultaneously, an appeal in the District Court

at Surat, was also filed which was registered as Civil Misc. Appeal No.39/98. The learned Extra Assistant Judge at Surat, to whom the appeal was made over, dismissed the appeal and directed the trial court to disposed of the application Ex.100, which is, as submitted before me, still pending. Accordingly, engaging the gangsters the petitioners have been trying often to usurp the plot threatening and making an attempt to enter into the plot No.9. They also make an attempt to do such act which would amount to commission of the offence of breach of peace. As they accordingly tried to usurp of the plot using force and giving threat though they do not have right, title or interest whatsoever in the plot No.9, and though the suit is pending they tried to sell out the plot to a head strong person, Ichchhiben and Bikhiben thought it fit to lodge a complaint against the petitioners so that they might not entered into the plot or permit others to enter into the plot. The complaint was then filed on 05th August, 1998, at 7.00 p.m., in the Umra Police Station. The Investigation Officer is investigating into the matter. Having come to know about lodging of the F.I.R. in the Police Station, the petitioners have filed this application for quashing of the F.I.R. exercising the powers under section 482 of the Cr.p.c.

4. Mr. Surti, the learned advocate representing the petitioners submits that, the petitioners are not the criminals, they are well reputed in the society. The petitioner no.1 is the Builder while petitioner no.2 is his mother. As the business of the petitioner no.1 is lucrative and he is regarded as the successful and prominent businessman in the city, many envy his prosperity and position in the society. They had determined to balk and vanquish so that checkmated petitioners might experience serious set back in the field. In fact, the complaint is got filed by their rivals and competitors though they have committed no offence upto now. It is also the contention that, since last few days the petitioner no.1 came in conflicts with Assistant Commissioner of Police Shri P.C. Thakur. Different complaints are therefore being lodged against them under the instigation of Shri P.C. Thakur. Lastly it is submitted on behalf of the petitioners that, when a false complaint is filed, and reading the complaint no offence appears to have been committed, it would be just and proper for this court to exercise the powers under section 482 of Cr.p.c., and quash the complaint.

5. In reply, Mr. P.G. Desai, learned PP appearing on behalf of the respondent no.1-State submits that the

scope of inquiry in such cases being limited, it would not be proper and just on the part of this court to quash the complaint because, at present, when police investigation is going on, the same cannot be frozen or pegged down exercising the powers under section 482 of Cr.p.c. It is also his contention that the case about the commission of offences is made out in the F.I.R. lodged which would also be the interdicting factor from exercising the powers.

6. The learned advocate representing the respondent no.2, the power of attorney holder of Ichchhiben and Bhikiben has supported the learned PP.

7. Before I proceed to dissect the merits of the rival contentions, it is necessary to state about my scope of inquiry. The Supreme Court while dealing with the question in the case of Mushtaq Ahmad Vs. Mohd. Habibur Rehman Faizi and others - AIR 1996 S.C. 2982 has made the law clear observing that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection. The court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. It is thus made clear that the powers are to be exercised in rarest of the rare cases. If perusing the FIR or the complaint and the documents annexed to it, the court finds that prima facie the case about the commission of one or the another offence is made out, it would not be just and proper on the part of the court to exercise the powers and quash the complaint. But if prima facie no offence appears to have been committed when FIR or complaint is perused, it would be in the fitness of the case to exercise the powers under section 482 and quash the complaint. In view of such law, my endeavour should be to find out whether a prima facie case about the commission of offence is made out. Before I proceed, it would be better, at this stage, the contention advanced by learned PP is dealt with. He submits that the powers under section 482 of the Cr.p.c. cannot be exercised when police investigation is in progress. In this connection, it would be worthwhile to refer the decision of the Allahbad High Court rendered in Ram Lal Yadav and others Vs. State of U.P. and others 1989 Criminal Law Journal 1013, to which I fully agree subject to the decision of the Supreme Court rendered thereafter which I will be referring to the same at the proper stage. It is held therein, that the power of the police to investigate

into a report which discloses the commission of a cognizable offence is unfettered and cannot be interfered with by the High Court in the exercise of its inherent powers under section 482 of Cr.p.c. The High Court has no inherent power under section 482, Cr.p.c., to interfere with the arrest of a person by a police officer even if it is in violation of section 41(1)(a) of Cr.p.c. either when no offence is disclosed in the FIR or when the investigation is malafide as the inherent powers of the court to prevent the abuse of the process of the court or to otherwise secure the ends of justice come into play only after the charge sheet has been filed in court and not during investigation which may even be illegal and unauthorised. The Allahbad High Court in that case relied upon the decision of the Privy Council as well as the decision of the Supreme Court, making it clear that, no doubt if no cognizable offence is disclosed and still more no offence of any kind is disclosed, the police would not have authority to undertake its investigation. But, if the FIR prima facie discloses that the cognizable offence has been committed, the investigation must go on and the rule in Khwaja Nazir Ahmed will apply. The court has then no power to stop the investigation because to do so would be to trench upon the lawful power of the police to investigate into the cognizable offence. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid down or received, and that can not be under section 482 of Cr.p.c., but under Article 226 of the Constitution of India.

8. In view of such law made clear, it is now to be examined whether the FIR, prima facie discloses commission of any of the offences. Reading the copy of the FIR at Annexure 'G' with meticulous care and finicky details, it clearly appears that no offence is yet committed but Ichchhiben and Bhikiben think about the possibility of commission of offence as they have alleged the case about preparation being made for committing the wrong. The case in F.I.R. if accepted in its entity as it is it becomes clear that no case relating to any of the offences is prima facie made out. It appears that the complaint is filed to remedy the civil wrong for which the respondent no.2 has filed above referred suit at present pending in the court of Civil Judge (S.D.) because while concluding in the FIR, it is prayed to take appropriate action. It is mentioned in the prayer clause that when the petitioners though having no right, title or interest in the plot no.9, and though the suit is

pending, try to sell the said plot to the head strong persons, till the Civil Court disposes of the suit, the petitioners are required to be restrained from entering into the plot or causing others to enter into the suit plot no.9. It can well be said that such prayer or clause indicates that after the ad-interim injunction application came to be dismissed by the learned Civil Judge (S.D.) at Surat, and when Ichchhiben and Bhikiben also failed in appeal, they found out a device to get the interim relief, filing the FIR and putting the criminal law to motion.

9. Faced with such situation, Mr. Desai, learned PP brought to my notice a position of 3 to 4 lines of FIR at page.5. It is stated therein that though their men were present, the petitioner no.1 taking with him the members of his gang trespassed into the plot no.9 by force and showing weapons terrified the persons present there and remaining present there got cut about 100 Babul Trees. No doubt, if that is the case, prima facie it would show that the offences of trespass and mischief have been committed for which the investigation must go on and this court should not as made clear by the above stated authorities interfere, but here the case is otherwise. For the said offences the present complaint is not lodged. When I inquired about the statement of a watchman, recorded by police and the panchnama drawn by the police during the course of investigation, the learned PP showed the same to me, getting the same from the police officer present in the court. A perusal thereof reveals that, about one year prior to the so-called incident, the incident about the criminal trespass and mischief took place for which another complaint is filed in August 1997. According to the watchman, two to three times the petitioner no.1 made the attempts to, enter into the land using force alongwith the members of his gang so as to usurp the land. About these incidents no action is taken. If the Babul Trees were cut off on or immediately prior to 5th August, 1998, certainly while drawing the panchnama police could have noted the stumps and cut marks in the plot. The panchnama is silent about such marks and cutting of any of the babul trees which is a circumstance strongest on record, at present also discrediting the truth of the complaint lodged by Ichchhiben and Bhikiben. In view of the matter, when it is clear that the FIR in question is not lodged about the criminal trespass and mischief alleged to have been committed the investigation of which is in progress but lodged for the so-called wrong committed about one year back and purpose for the same is to remedy the civil wrong after having failed in the suit

in getting the interim relief, no offence even prima facie can be said to have been made out. In view of the above referred decisions, it is open to this court to interfere with the police investigation and stop the same by quashing the FIR.

10. Mr. Desai, learned PP, at this stage, again draws my attention to the decision rendered in the case of Ram Lal Yadav (Supra) and contends that, it would not be just to quash the proceedings even if the court finds that no prima facie case about the commission of the offence or any of the offences even prima facie is made out, because, this is the application filed under section 482 of Cr.p.c., and not under Article 226 of the Constitution of India. I cannot give a seal of approval to such contention though of course it is based on the decision in Ram Lal Yadav (Supra). After that decision, the Supreme Court had the occasion to deal with such question in the case of State of Haryana and others Vs. Ch. Bhajanlal and others - AIR 1992 S.C. 604, wherein elaborating the points from several angles, the Supreme Court, has in Para.108, made the law clear holding that in the backdrop of the interpretation of various relevant provisions of the Cr.p.c. under Chapter XIV, and of the principles of law enunciated by it in a series of decisions relating to the exercise of extra ordinary power under Article 226 or the inherent powers under section 482 of the Cr.p.c., certain categories of the cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. Certain categories of cases are mentioned and they are as under:

1. Where the allegations made in the First

Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First

Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of section 115(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under section 155(2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

11. The present case would certainly fall within the ambits of categories nos. 1 to 3. This decision of the Supreme Court makes it clear that, if no case is made out in the FIR or the complaint, even prima facie, it would be just on the part of the court to exercise the powers even under section 482 of the Cr.p.c. and quash the FIR as well as the investigation which is in progress. When the Supreme Court has accordingly laid down, the decision rendered by the High Court of Allahbad, in Ram Lal Yadav case (supra) cannot come to the rescue of the respondents, and to this extent, the view taken by the Allahbad High Court cannot be held to be sound and legal.

12. For the aforesaid reasons, it is clear that to remedy the dispute, purely of a civil nature, and to get

the relief strategically after having failed in getting the interim relief in the suit, criminal action is initiated which is nothing but an abuse of the process of the court. In the result to secure the ends of justice, appropriate order as prayed for in the petition is required to be passed.

13. For the aforesaid reasons, the application deserves to be allowed and is accordingly allowed. The FIR lodged with Umra Police Station as Crime Register No. I 371 of 1998 and the investigation thereof being carried out by the police are hereby quashed. Rule accordingly made absolute.

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